



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX COMMERCIAL SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent and utilities; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on May 23, 2014. Canada Post tracking numbers were provided by the landlord in verbal testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. The landlord was permitted to provide additional documentary evidence to the Arbitrator and the tenant after the hearing had concluded. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?

- Is the landlord permitted to keep all or part of the security and pet deposit?

Background and Evidence

The landlord testified that this tenancy started on July 11, 2013 for a fixed term tenancy which was not due to end until April 30, 2014. The landlord has provided a copy of the tenancy agreement in documentary evidence. This agreement shows that rent was \$2,200.00 per month due on the 1st of each month. The tenant paid a security deposit of \$1,100.00 and a pet deposit of \$400.00 on July 04, 2013.

The landlord testified that the tenant requested to be allowed to move from the unit at the end of March, 2014. The owner of the unit agreed to this as long as the tenant agreed to pay half a month's rent for April, 2014. The landlord testified that the tenant would not agree to this and vacated the rental unit on March 31, 2014. The tenant only paid \$600.00 towards his rent for March leaving an unpaid balance of \$1,600.00. The landlord seeks to recover the rent arrears for March and half a month's loss of rent for April. The landlord testified that the owners moved back into the unit at the end of April, 2014. The landlord has provided a copy of the rent ledger in documentary evidence.

The landlord testified that the tenant paid his City utilities for the last quarter of 2013 on March 17, 2014. The first quarter of the City utility bills of \$173.58 have not been paid by the tenant. The landlord testified that the tenant received a copy of the utility bill. The landlord was permitted to provide a copy of the utility bill after the hearing had concluded.

The landlord seeks an Order to be permitted to keep the security and pet deposits to a total amount of \$1,500.00 to offset against the unpaid rent and utilities. The landlord also seeks to recover the \$50.00 filing fee paid for this application.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

Section 26 of the *Act* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied from the evidence before me that the tenant owes rent for March, 2014 of **\$1,600.00**. Furthermore I am satisfied that this was a fixed term tenancy which was not due to end until April 30, 2014. The tenant requested to be allowed to move out a month earlier and the owner of the unit agreed the tenant could do so on the provision that the tenant paid half a month's rent for April. I refer the parties to s. 45(2) of the *Act* which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Consequently, I find the tenant could not legally end the tenancy until April 30, 2014 and the parties did not sign a mutual agreement to end the tenancy earlier on March 31,

2014. Therefore the tenant is responsible for rent for April to fulfill the terms of the tenancy agreement. I find the owner of the unit has been more than reasonable in allowing the tenant to vacate the unit at the end of March and only having to pay half a month's rent for April. Consequently, I find the landlord has established a claim to recover **\$1,100.00** in lost revenue for April, 2014.

With regard to the landlord's claim to recover unpaid utilities; the landlord was permitted to provide additional documentary evidence showing the utility bill for the first quarter of 2014. A landlord has the burden of proof to show the actual amounts claimed for utilities. The landlord provide a copy of the utility bill for this and having reviewed that utility bill I find in favour of the landlords claim to recover unpaid utilities of **\$173.58**.

I Order the landlord to keep the security and pet deposit of **\$1,500.00** pursuant to s. 38(4)(b) of the Act in partial satisfaction of the landlord's claim.

As the landlord's claim has some merit I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the Act as follows:

Unpaid rent for March	\$1,600.00
Loss of revenue for April	\$1,100.00
Unpaid utilities	\$173.58
Filing fee	\$50.00
Less security deposit	(-\$1,500.00)
Total amount due to the landlord	\$1,423.58

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,423.58**. The Order

must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 25, 2014

Residential Tenancy Branch

